

Issue Brief – Electronic Transaction Fees

NUMBER EDR-08-01

SUMMARY

Revenue Procedures and Control Act Amendments (Senate Bill 175, 2003 General Session) authorized state agencies to collect fee surcharges to cover the cost of electronic transactions such as credit card merchant fees, payment-portal charges, and online application development costs. The statute enacted by the S.B. 175 (UCA 63-38a-105, Electronic Revenue Collections) is set to sunset on July 1, 2007.

The Legislative Fiscal Analyst presented an analysis of electronic transaction fee processes to the Executive Appropriations Committee and to the Government Operations Interim Committee during the 2006 Interim. The Analyst's report states that S.B. 175 provided a necessary and useful transition mechanism for enabling online transactions. The report further recommends allowing that the provisions of S.B. 175 to sunset since provisions of the Budgetary Procedures Act govern changes to base fees charged by state agencies and provide sufficient legislative oversight of such fees in absence of UCA 63-38a-105.

In light of the Analyst's findings, the Government Operations Interim Committee voted unanimously to allow UCA-63a-105 to sunset and Executive Appropriations Chairman Hillyard directed the Fiscal Analyst to prepare specific fee, appropriation, and statute changes to address the report's recommendations and present this information to the appropriations subcommittees during the 2007 General Session.

OBJECTIVE

This issue brief highlights key findings contained in the Fiscal Analyst's report on electronic transaction fee processes, which is available online at <http://www.le.utah.gov/interim/2006/pdf/00001659.pdf>, and provides recommendations for dealing with electronic transaction costs absent the electronic revenue collections statute.

DISCUSSION AND ANALYSIS

Senate Bill 175, General Session 2003

Senate Bill 175 provided a process by which agencies could accept electronic payment for services and commodities, thereby playing an essential role in motivating state agencies to offer electronic transaction options. The bill:

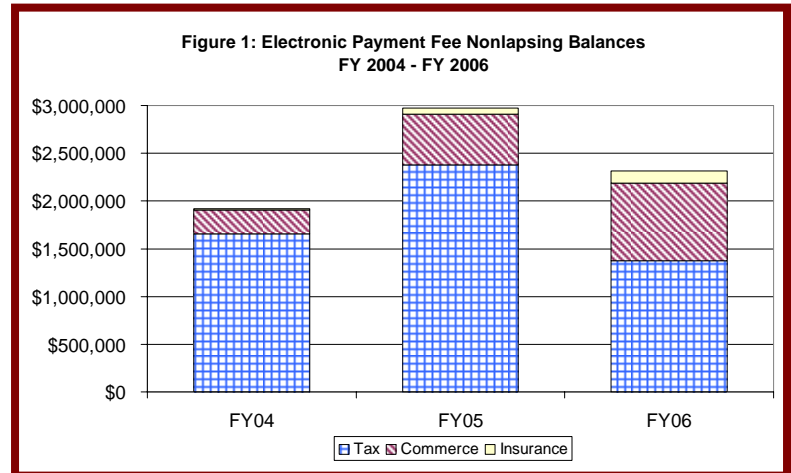
- authorized state agencies to collect fees or other revenues via electronic means,
- authorized agencies to increase their fees to cover the cost charged by third parties to process those electronic payments,
- directed agencies to, where possible, embed electronic transaction costs in total operating costs and charge one fee per service or commodity,
- directed agencies to deposit revenue from electronic payment surcharges into a separate account to be used to cover the costs of electronic transactions,
- directed the Legislative Fiscal Analyst to review the processes established by the bill and make recommendations to the Executive Appropriations Subcommittee, and
- included a repeal date of July 1, 2007.

Agency Practice

The Analyst found that only three agencies—the Tax Commission, the Department of Commerce, and the Department of Insurance—are abiding by the procedures established in S.B. 175 for accepting electronic payment fees. Other agencies are either covering costs under existing fee-setting authority or using outside vendors that provide online services and collect fees directly from users of these services.

The electronic payment fee nonlapsing balances shown in Figure 1 at the right represent electronic payment fees charged to citizens that are in excess of the actual costs associated with those transactions. The agencies following S.B. 175's procedures for electronic transactions have consistently collected more in electronic transaction fees than they have expended on electronic transaction costs since the bill's implementation.

Tax, Commerce, and Insurance recognize growing balances in their electronic payment fee accounts and are either actively or planning to draw down balances. Beginning in FY 2006, the Tax Commission reduced the transaction fee for motor vehicle registrations from \$2.00 to \$0.50. The Commission plans to increase the fee to \$1.25 once balances are depleted. The Department of Commerce reports that it plans to reduce many of its electronic fees by \$1 beginning in Fiscal Year 2008. The Insurance Department plans to seek authority during the 2007 General Session to use balances to offset other on-line costs; for example, on-line insurance filers pay an \$8 registration fee to a private application service provider in addition to the electronic payment fee charged by Insurance, the Department would like to subsidize the \$8 fee.



Special Considerations

The Analyst recommends allowing UCA 63-38-105 to sunset given that provisions of the Budgetary Procedures Act govern changes to base fees charged by state agencies and provide sufficient legislative oversight of such fees in absence of this statute. Should the Legislature take no action against the repeal of UCA 63-38-105, there are two major issues to address: balances in electronic payment fee accounts and the special circumstance of base fees that are not dedicated credits. Tax, Commerce, and Insurance will need to deplete the current balances in electronic payment fee accounts by decreasing fees or seeking permission from the Legislature to off-set other electronic transaction expenses, as Insurance plans to do. The Legislature may also eliminate existing balances by appropriating the balances to agency operating budgets or lapsing the balances to other relevant funds or accounts.

The Fiscal Analyst believes that agencies, in general, should not charge separate fees for electronic transaction costs, but that those costs should be included in total costs and in-turn reflected in base fee charged to all consumers. Including such costs in the base fees, however, may present a challenge if base fees are not dedicated credits. For example, Department of Commerce base fees accrue to the Commerce Service Fund and many of the Tax Commission's Motor Vehicle Enforcement Division base fees accrue to the General Fund. To address such cases, the New Year Supplemental Appropriations Act should authorize both increases in base fees to include electronic payment surcharges *and* appropriate monies from the relevant fund or account back to the agency to pay its electronic transaction costs. Electronic transaction fees for motor vehicle registrations present a particularly unique case because registration fees accrue to the Transportation fund. Since appropriations from the Transportation fund are capped, the Tax Commission will be unable to use collections to cover electronic transaction costs if electronic surcharges are included in the total registration fee. The Commission is seeking

legislation during the 2007 General Session to address this unique case by allowing the continuation of the current electronic payment fee policies and procedures.

LEGISLATIVE ACTION

The Analyst recommends that the Legislature should allow the provisions of S.B. 175 to sunset. Under UCA 63-55b-163, these provisions are set to repeal July 1, 2007 without further action from the Legislature. In anticipation of this repeal, the Legislature may wish to take the following actions:

1. Direct agencies to decrease surcharges in FY 2007 to eliminate electronic transaction fee balances, appropriate balances to agency operating budgets, or lapse balances to relevant funds or accounts;
2. Direct agencies to adjust base fees to reflect the costs of electronic transactions and authorize these increases in the New Year Supplemental Appropriations Act;
3. In the case of fees that are not dedicated credits, appropriate monies from relevant funds back to the responsible agencies to cover the costs of electronic transactions in the New Year Supplemental Appropriations Act; and
4. Enact new legislation that specifically allows the Tax Commission to continue following current electronic payment fee policies and procedures.